IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

**APPEAL FROM ORDER NO.855 OF 2004**
**IN**
**NOTICE OF MOTION NO. OF 2004**
**IN**
**S.C. SUIT NO.5023 OF 2003**

Rev. D. Jeyaraj & Ors. ... Appellants

V/s.

Mr.Jebakumar & Ors. ... Respondents

Mr.Suresh Gole for Appellants
Mr.P.K. Dhakephalkar with J.S. Kini for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 5, 2004**

**P.C.:**

. The present Appeal from Order has been filed against the order dated 17.9.2004 by which the earlier order of 1.12.2003 in Notice of Motion No.4192 of 2003 has been modified. The Notice of Motion was made absolute in terms of prayer clauses (a) & (b). By the order of 1.12.2003, the plaintiffs were directed to permit the defendants and all other worshippers to enter into the suit Church from 8.30 am to 11 am on all weekdays and from 6am to 11am on Sundays and also 8 pm to 10 pm on Wednesdays and 2pm to 4pm on Fridays. The Plaintiffs sought a modification of this order by filing Notice of Motion No.2397 of 2004. The Defendants filed

a Notice of Motion for permitting them to worship in the Church at times other than those fixed for the Plaintiffs and other similarly minded people from laity. Accordingly, the worshipping hours for the Plaintiffs were fixed from 8am to 11 am on Sundays and from 8pm to 10pm on Wednesdays, from 2 pm to 4 pm on Fridays for women and from 8pm to 11 pm on the first Friday of the month. Simultaneously, the defendants and other worshippers like them were permitted to conduct the service between 6 am to 8am in the mornings, 6 pm to 8pm in the evenings everyday and from 11 am to 1 pm on every Sunday which times were totally different from the timings fixed for the plaintiffs. The trial Judge has taken into consideration that there are two groups vying for the Church premises and authority over it. However, with a view that nobody should be deprived from worshipping in the Church, the trial Court has fixed the timings as stated above.

2. The main contention of the appellants is that the Bishop of Bombay appointed by the Church of North India appoints the priest, that is Presbyter, to conduct the services and preside over the congregation in the Church. No other person, according to the Appellants, is permitted to act as Presbyter. It is only when the Bishop changes the person so appointed, can some other person conduct the services and preside over the

congregation. As pointed out on behalf of the respondents, the present suit has been filed by the members claiming to be an ad-hoc Church committee of St.John's Tamil Church which is part of the Church of North India. However, there is nothing on record to show that either the Bishop or the Church of North India have any objection to the Church's services being conducted by and on behalf of the defendants and other like minded people between the timings fixed by the trial Court. Moreover, there is nothing on record to show that the Church belongs to or is owned by either the appellants or the respondents. It would, therefore, be difficult at the prima facie stage to come to any conclusion. In any event, neither the Church of North India nor the Bishop has come forward to claim that the Church is the property of a particular trust and that the respondents cannot worship in the Church by conducting the services themselves through Defendant No.1.

3. I see no reason to interfere with the order of the trial Court. In any event, the suit has been fixed for expeditious hearing.

4. The apprehension of the appellants that keeping the Church open for such a long period of time would mean that there would be a possibility of theft or of

the respondents usurping the Church's property seem to be unfounded. There is nothing on record to show that the respondents have at any point of time sought to usurp the Church's property or have acted irresponsibly. Their only anxiety is to worship in the Church. In the event the appellants so desire, either they or their representatives can remain present at the services conducted by Defendant No.1 and attended by other defendants and laity, without causing any hindrance or interference in the service.

5. In view of this, Appeal from Order is dismissed.

6. Mr.Gole, learned Counsel for the Appellants, states that the appellants will appoint two watchmen who will be present at the time the services are conducted by the Defendants in the Church. Mr.Dhakephalkar, learned Counsel for the Respondents agrees that the defendants will pay the remuneration of the two watchmen.

7. In view of the disposal of the Appeal from Order, nothing survives in Civil Application No.1163 of 2004 and the same is disposed of accordingly.